

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

October 15, 2013 at 9:32 A.M.

1.	<u>13-23535</u> -B-7	JOHN LEE	CONTINUED REQUEST FOR ENTRY OF
	<u>13-2205</u>		DEFAULT
	AMERICAN EXPRESS BANK, FSB V.		8-20-13 [<u>13</u>]
	LEE		

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. Judgment will be rendered in favor of plaintiff American Express Bank, FSB, in the amount of of \$7,191.33, plus attorney's fees of \$1,250.00 and costs of \$293.00, for a total of \$8,736.33. The foregoing amount shall be nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A). \$3,964.88 of the foregoing amount shall be nondischargeable pursuant to 11 U.S.C. § 523(a)(14A). Except as so ordered, the motion is denied.

The Plaintiff has in its complaint sufficiently pled its cause of action for recovery of a nondischargeable debt pursuant to 11 U.S.C. § 523(a)(2)(A) and (a)(14A). "Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading." Fed. R. Bankr. P. 7008(a), incorporating Fed. R. Civ. P. 8(d); Geddes v. United Financial Group, 559 F.2d 557, 560 (9th Cir.1977).

The court will issue a minute order granting the motion. The Plaintiff shall submit a separate form of judgment that conforms to the court's ruling and complies with Fed. R. Bankr. P. 9021.

2.	<u>12-29460</u> -B-7	MARK/MARIANNA HARRIS	MOTION FOR ENTRY OF DEFAULT
	<u>13-2129</u>	LBG-2	JUDGMENT
	RODRIGUEZ V. HARRIS		9-12-13 [<u>50</u>]

Tentative Ruling: None.

3. [11-48519](#)-B-11 VICTOR HANNAN
DL-6

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF DAHL LAW FOR
WALTER R. DAHL, DEBTOR'S
ATTORNEY(S), FEES: \$9,641.00,
EXPENSES: \$213.54
9-11-13 [[145](#)]

Tentative Ruling: The motion is granted to the extent set forth herein. The application is approved on an interim basis in the amount of \$9641.00 in fees and \$213.54 in costs, for a total of \$9854.54. The applicant is authorized to apply the amount of \$9854.54 from the balance of the applicant's retainer (\$14,916.09) to the allowed total. Except as so ordered, the motion is denied.

On December 8, 2011, the debtor filed a chapter 11 petition. By order entered on January 27, 2012 (Dkt. 34) (the "Order"), the court authorized employment of the applicant as counsel for the debtor-in-possession. The Order further approved the applicant's employment with an effective date of December 8, 2011. The applicant now seeks compensation for services for the period of October 1, 2012, through June 30, 2013. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

4. [11-48519](#)-B-11 VICTOR HANNAN
[12-2122](#) RLS-2
DEVINE V. HANNAN

MOTION FOR AN AWARD OF COSTS IN
FAVOR OF TERRENCE DEVINE
AGAINST VIC HANNAN
8-28-13 [[91](#)]

Tentative Ruling: The motion is granted in part. Pursuant to Fed. R. Bankr. P. 7054(b) and Fed. R. Civ. P. 54(d), the judgment in favor of the plaintiff in this case shall include an award of costs in the amount of \$1,341.48. Except as so ordered, the motion is denied.

The court awards plaintiff costs in the amount of \$1,341.48 rather than the \$1,341.50 requested in the motion or the \$1,342.50 total amount indicated on the bill of costs filed as an exhibit to the motion (Dkt. 94) because the court calculates the total of plaintiff's costs based on the individual items on the bill of costs to be \$1,341.48.

The court will issue a minute order granting the motion. Counsel for the plaintiff shall submit a proposed form of judgment which conforms to the foregoing ruling and which conforms to the minute order after trial entered on August 22, 2013 (Dkt. 88).

Tentative Ruling: This matter continued from October, 2013. It remains in a preliminary posture under LBR 9014-1(f)(2). Opposition may be presented at the hearing. In this instance, the court issues the following tentative ruling.

The motion is granted in part. Pursuant to 11 U.S.C. § 363(b) and (f), the chapter 7 trustee is authorized to sell personal property of the estate consisting of the debtor's interest in a 2001 Mercedes Benz ML55 automobile, California dealer license plate no. 21417 (the "Property") in an "as-is" and "where-is" condition to the debtor, James Coxeter, for \$10,225.00. The debtor may apply his claimed exemption in the vehicle of \$2,725.00 as set forth in the amended Schedule C filed on September 30, 2013 (Dkt. 954), against the purchase price of the vehicle. The trustee is authorized to distribute the cash sale proceeds in the manner set forth in the motion. The trustee is authorized to sell the Property free and clear of the judgment lien of George Miske ("Miske") pursuant to 11 U.S.C. § 363(f)(2). The net proceeds of the sale shall be administered for the benefit of the estate. The trustee is authorized to execute all documents necessary to complete the approved sale. The fourteen-day stay of the order granting this motion imposed by Fed. R. Bankr. P. 6004(h) is waived. Except as so ordered, the motion is denied.

The sale will be subject to overbidding on terms approved by the court at the hearing on the motion.

The court authorizes a sale free and clear of the judgment lien in favor of Miske pursuant to 11 U.S.C. § 363(f)(2). Pursuant to the terms of a compromise (Dkt. 865) approved by the court by order entered August 27, 2013 (Dkt. 917), the trustee and Miske agreed that the estate would receive 10% of the gross sale proceeds from a sale of the Property, and that Miske would receive the remainder of the proceeds after deductions for normal and customary costs of sale, consensual liens and any exemption claimed by the debtor. In this case, there are no costs of sale or consensual liens. The debtor has also not claimed any exemption in the Property.

The trustee shall submit a proposed form of order that is consistent with the foregoing ruling.

Tentative Ruling: This matter continued from October 1, 2013. It remains in a preliminary posture under LBR 9014-1(f)(2). Opposition may be presented at the hearing. In this instance, the court issues the following tentative ruling.

The motion is granted in part. Pursuant to 11 U.S.C. § 363(b) and (f), the chapter 7 trustee is authorized to sell personal property of the

estate consisting of the debtor's interest in a 2002 Mercedes Benz SL500 automobile, California dealer license plate no. 21417 (the "Property") in an "as-is" and "where-is" condition to the debtor, James Coxeter, for \$11,500.00. The trustee is authorized to distribute the cash sale proceeds in the manner set forth in the motion. The trustee is authorized to sell the Property free and clear of the judgment lien of George Miske ("Miske") pursuant to 11 U.S.C. § 363(f)(2). The net proceeds of the sale shall be administered for the benefit of the estate. The trustee is authorized to execute all documents necessary to complete the approved sale. The fourteen-day stay of the order granting this motion imposed by Fed. R. Bankr. P. 6004(h) is waived. Except as so ordered, the motion is denied.

The sale will be subject to overbidding on terms approved by the court at the hearing on the motion.

The court authorizes a sale free and clear of the judgment lien in favor of Miske pursuant to 11 U.S.C. § 363(f)(2). Pursuant to the terms of a compromise (Dkt. 865) approved by the court by order entered August 27, 2013 (Dkt. 917), the trustee and Miske agreed that the estate would receive 10% of the gross sale proceeds from a sale of the Property, and that Miske would receive the remainder of the proceeds after deductions for normal and customary costs of sale, consensual liens and any exemption claimed by the debtor. In this case, there are no costs of sale or consensual liens. The debtor has also not claimed any exemption in the Property.

The trustee shall submit a proposed form of order that is consistent with the foregoing ruling.

7. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC
FWP-91

CONTINUED OBJECTION TO CLAIM OF
WASTE MANAGEMENT, CLAIM NUMBER
347
7-2-13 [[1961](#)]

Disposition Without Oral Argument: This matter continued from September 17, 2013, to allow the debtor to submit supplemental evidence in support of the objection. The debtor filed supplemental evidence and a supplemental memorandum on September 30, 2013 (Dkt. 2237-2239). This objection is unopposed. The court issues the following abbreviated ruling.

The debtor's objection is sustained, and claim No. 347 filed on January 17, 2013, by Waste Management, (the "Claim") is disallowed for any amount in excess of \$29,599.21.

A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure ("FRBP") constitutes prima facie evidence of the validity and amount of a claim. FRBP 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Litton Loan Servicing, LP v. Garvida (In re Garvida), 347 B.R. 697 (9th Cir. BAP 2006).

Here, the claim is entitled to prima facie validity. The proof of claim form is properly completed and specifies an amount and basis for the

Claim. The Claim is also accompanied by invoices which detail the amounts on which the Claim is based.

However, as the motion and the supporting declarations of Jennifer Byrne (Dkt. 1963, 2238) point out, the invoices include several invoices in the aggregate amount of \$10,401.79 seeking payment for post-petition services. The foregoing is sufficient to rebut the prima facie validity of the Claim's amount and justifies disallowance of the Claim for any amount in excess of \$29,599.21.

The court will issue a minute order.

8. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC CONTINUED OBJECTION TO CLAIM OF
FWP-96 PACIFIC GAS AND ELECTRIC
COMPANY, CLAIM NUMBER 254
8-2-13 [[2041](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

In the objection is removed from the calendar. By order signed October 9, 2013, the court continued the objection to November 12, 2013, at 9:32 a.m., pursuant to the stipulation of the parties.

9. [12-37961](#)-B-11 ZF IN LIQUIDATION, LLC CONTINUED OBJECTION TO CLAIM OF
FWP-96 PACIFIC GAS AND ELECTRIC
COMPANY, CLAIM NUMBER 254
8-2-13 [[2041](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

This matter is removed from the calendar. It is a duplicate of matter no. 8 on this calendar.

10. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA MOTION FOR APPROVAL OF
PD-5 STIPULATION RE: TREATMENT OF
CLAIM UNDER DEBTORS' PROPOSED
CHAPTER 11 PLAN OF
REORGANIZATION
9-10-13 [[488](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. The Stipulation Re: Treatment of Claim under Debtors' Proposed Chapter 11 Plan of Reorganization (Dkt. 490) is approved and binding between the parties thereto. Except as so ordered, the motion is denied.

The court will issue a minute order.

11. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA CONTINUED MOTION TO VALUE
KG-11 COLLATERAL AND AVOID LIEN OF
WELLS FARGO
4-21-13 [[58](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is removed from the calendar, as resolved by the stipulation of the debtors and the secured creditor filed on September 10, 2013 (Dkt. 490), and approved by the court elsewhere on this calendar.

The court will issue a minute order.

12. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA MOTION TO VALUE COLLATERAL OF
KG-469 REALTIME RESOLUTION, INC.
9-10-13 [[484](#)]

Tentative Ruling: This motion is unopposed. In this instance, the court issues the following abbreviated tentative ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted in part. In the absence of opposition, for the purposes of this motion, the debtor's real property located at 230 Wicked Wedge Way, Las Vegas, Nevada (the "Property") had a value of \$155,000.00 on the date of the filing of the petition. Except as so ordered, the motion is denied.

The motion does not request valuation as of any particular date; however, the value asserted in the motion is the value assigned to the Property in the debtor's Schedule filed under penalty of perjury on March 15, 2013 (Dkt. 1 at 13). The Schedules speak as of the petition date. 11 U.S.C. § 541(a)(1) ("[The bankruptcy] estate is comprised of all of the following property...(1)...all legal and equitable interests of the debtor in property as of the commencement of the case."). Accordingly, the court treats the motion as requesting valuation as of the petition date. The resultant valuation does not establish a value of the Property for all purposes in this chapter 11 case. For example, except to the extent particular parties may stipulate to the contrary, it does not establish the value for purposes of treatment of any secured claim in the context of chapter 11 plan confirmation. The proper valuation for that purpose may vary depending on the treatment proposed in the plan, and in the cramdown context, "the relevant collateral should be valued as of the effective date of the plan." 4 Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy ¶ 506.03[d][10] (15th ed. Rev. 2009). In this case, the court has yet to approve a disclosure statement or confirm a

plan.

The court will issue a minute order.

13. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA
KG-484

MOTION TO USE CASH COLLATERAL
9-10-13 [[494](#)]

Tentative Ruling: The opposition filed by Bank of New York Mellon ("BONYM") is sustained. The motion is granted in part. The debtors are authorized to use cash collateral (the "Cash Collateral") consisting of the rents from real property located at 230 Wicked Wedge Way, Las Vegas, Nevada (the "Property") for the purpose of paying the following items listed on the proposed budget (the "Budget") filed as Exhibit "A" to the motion: 1.) the proposed payment to BONYM, 2.) property taxes and insurance, 3.) maintenance and 4.) homeowner's association fees. The payments to BONYM shall be applied to BONYM's secured claim, and not to interest, fees or costs. The debtors are authorized to use the Cash Collateral for the foregoing items pending further order of the court. The debtors are not authorized to use Cash Collateral for any other purpose without consent of BONYM or authorization of the court. Excess cash collateral, if any, that is not used for one of the foregoing authorized items shall be deposited into a segregated account pending further order of the court.

The debtors are not authorized to expend cash collateral consisting of the net rents after property-related expenses on fees for their bankruptcy counsel or the United States trustee. The debtors have failed to demonstrate that those expenses contribute to adequate protection of BONYM's interest in the Property or the Cash Collateral. Furthermore, the designation of net rents for payment of attorney's fees essentially amounts to an attempt to generate a self-replenishing post-petition retainer for the debtor's bankruptcy counsel. It is only the rare case in which such procedures are approved. See U.S. Trustee v. Knudsen Corp. (In re Knudsen Corp.), 84 B.R. 668, 672-673 (9th Cir. BAP 1988).

The court will issue a minute order.

14. [13-24055](#)-B-11 JESUS/ANGELICA MEDINA
KG-485

MOTION TO USE CASH COLLATERAL
9-10-13 [[497](#)]

Disposition Without Oral Argument: The motion is granted. The debtors are authorized to use cash collateral consisting of the rents from real property located at 3728 Rocky Shore Drive, Vallejo, California in a manner consistent with the budget filed with the motion as Exhibit "A" (Dkt. 499), provided that payments made to lienholder Wells Fargo Bank, N.A. are applied by the bank only to reduce the amount of its allowed secured claim. Except as so ordered, the motion is denied.

The court will issue a minute order.

15. [12-41214](#)-B-11 RICHARD LYMAN
JHH-10

MOTION TO VALUE COLLATERAL OF
SANDANDER CONSUMER USA, INC.
9-15-13 [[123](#)]

Tentative Ruling: This motion is unopposed. In this instance, the court issues the following abbreviated tentative ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) is granted in part. In the absence of opposition, for the purposes of this motion, the debtor's 2006 Crownline B/S Boat ("Property") had a value of \$8,300.00 as of July 22, 2013. Nothing in this ruling affects any rights under 11 U.S.C. § 1111 held by Santander Consumer USA, Inc. Except as so ordered, the motion is denied.

The motion does not request valuation as of any particular date. The court uses the value in the 2013 tax assessment valuation issued by Placer County on July 22, 2013 (Dkt. 125, p.4). The resultant valuation does not establish a value of the Property for all purposes in this chapter 11 case. For example, except to the extent particular parties may stipulate to the contrary, it does not establish the value for purposes of treatment of any secured claim in the context of chapter 11 plan confirmation. The proper valuation for that purpose may vary depending on the treatment proposed in the plan, and in the cramdown context, "the relevant collateral should be valued as of the effective date of the plan." 4 Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy ¶ 506.03[d][10] (15th ed. Rev. 2009). In this case, no disclosure statement has been approved, and the filed plan is yet to be confirmed.

The court will issue a minute order.

16. [12-41214](#)-B-11 RICHARD LYMAN
JHH-9

MOTION TO VALUE COLLATERAL OF
LAW OFFICES OF SCOTT BOVEE
9-15-13 [[119](#)]

Tentative Ruling: This motion is unopposed. In this instance, the court issues the following abbreviated tentative ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) is granted in part. In the absence of opposition, for the purposes of this motion, the debtor's real property located at 5961 Becky Way, Loomis, CA 95650 ("Property") had a value of \$252,000.00 as of August 7, 2013. Nothing in this ruling affects any rights under 11 U.S.C. § 1111 held by the Law Offices of Scott Bovee. Except as so ordered, the motion is denied.

The motion does not request valuation as of any particular date. The court uses the value in the stipulation (Dkt. 104) between the debtor and Greentree Servicing LLC, the holder of the 1st DOT on the Property, which was approved by the court on August 7, 2013. The resultant valuation does not establish a value of the Property for all purposes in this

chapter 11 case. For example, except to the extent particular parties may stipulate to the contrary, it does not establish the value for purposes of treatment of any secured claim in the context of chapter 11 plan confirmation. The proper valuation for that purpose may vary depending on the treatment proposed in the plan, and in the cramdown context, "the relevant collateral should be valued as of the effective date of the plan." 4 Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy ¶ 506.03[d][10] (15th ed. Rev. 2009). In this case, no disclosure statement has been approved, the filed plan is yet to be confirmed.

The court will issue a minute order.

17.	<u>11-49408</u> -B-7	PATRICK/RETHA KENOYER	MOTION FOR ENTRY OF DEFAULT
	<u>13-2119</u>	SLF-10	JUDGMENT
	WHATLEY V. KENOYER ET AL		9-6-13 [<u>42</u>]

Tentative Ruling: The court issues the following abbreviated tentative ruling.

The motion is granted in part. Judgment by default will be rendered in favor of the plaintiff, chapter 7 trustee Douglas Whatley ("Trustee"), against defendants Patrick Kenoyer and Retha Kenoyer (collectively, "Defendants") and the Defendants' discharges in their parent bankruptcy case, case no. 11-49408, are denied pursuant to 11 U.S.C. §§ 727(a)(2)(A), (a)(4)(A), and (a)(4)(D). To the extent that the Trustee seeks attorneys' fees and costs, the motion is denied without prejudice. Except as so ordered, the motion is denied.

The Trustee seeks default judgment against the Defendants. The Trustee commenced the adversary proceeding by filing a complaint against Defendants on April 5, 2013 (Dkt. 1). Defendants did not answer the complaint. Default was entered August 9, 2013 (Dkt. 36).

The facts alleged without dispute in the complaint include the following. On December 22, 2011, the Defendants filed their voluntary petition under chapter 7. Within one year prior to the petition date, the Defendants spent \$90,000.00 of their own money to build a house and open a bank account in Loreto, Mexico. This was done with the intent to hinder, delay, or defraud one or more of their creditors. At the section 341(a) meeting of creditors held on January 31, 2012, the Defendants testified under oath that they did not own real property or a bank account in Mexico when asked by the Trustee. After the Defendants were asked by a creditor, they admitted to owning the real property and bank account. As such, the Defendants knowingly and fraudulently made a false oath or account. Additionally, during the meeting of creditors the Trustee requested that the Defendants provide him information regarding the address and ownership of the real property and information on the bank account. To date, the Defendants have failed to provide this documentation. The Defendants have therefore withheld recorded information, including documents, records, and papers, relating to the real property and bank account. The Trustee alleges without dispute that the foregoing constitutes grounds for denials of the Defendants' discharges in their parent bankruptcy case pursuant to 11 U.S.C. §§ 727(a)(2)(A), (a)(4)(A), and (a)(4)(D).

The court denies the Trustee's requests for attorneys' fees and costs without prejudice because he has failed to provide either any authority for an award of attorneys' fees or any specific evidence as to the amounts of attorneys' fees and costs requested. The Trustee may submit a separate motion for attorneys' fees and costs in accordance with Fed. R. Bankr. P. 7054, incorporating Fed. R. Civ. P. 54(d).

The court will issue a minute order granting the motion to the foregoing extent. The Trustee shall submit a form of judgement that conforms to the court's ruling and complies with Fed. R. Bankr. P. 9021.

18. [12-38716](#)-B-7 MARGARET KORAN MOTION FOR COMPENSATION FOR
MET-5 ENTERPRISES, INC MARY ELLEN TERRANELLA,
TRUSTEE'S ATTORNEY(S), FEES:
\$1,793.24, EXPENSES: \$26.56
9-12-13 [[40](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. The application is approved on a first and final basis in the amount of \$1,793.24 in fees and \$26.56 in expenses, for a total of \$1,819.80, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

Applicant seeks compensation for services rendered and costs incurred during the period December 28, 2012, through September 6, 2013. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

19. [13-30419](#)-B-7 KYLE PEZZETTI AND MOTION TO AVOID LIEN OF CACH,
ACK-1 JENNIFER SILVA LLC
8-15-13 [[11](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The judicial lien in favor of Cach, LLC, is avoided as against \$692.04 in wages held by the Los Angeles County Sheriff's Department (Civil Division) pursuant to the Wage Garnishment Order in Sacramento County Superior Court Case No. 34-2012-00118880. Except as so ordered, the motion is denied.

The debtors claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(5), under which they could have exempted \$1,280.00. The respondent holds a judicial lien created by the service of an earnings withholding order upon the earnings of the judgment debtor. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtors' exemption of the property and its fixing is avoided.

The court will issue a minute order.

20. [13-25726](#)-B-7 ALEXANDER HERNANDEZ MOTION TO EXTEND TIME AND/OR
AMJ-2 MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
9-9-13 [[19](#)]

Tentative Ruling: The motion is unopposed. In this instance, the court issues the following abbreviated tentative ruling.

The motion is granted in part. The debtor's request to extend the time to file a reaffirmation agreement with creditors Santander Consumer USA and Navy Federal Credit Union (collectively, the "Creditors") pursuant to Fed. R. Bankr. P. 4008(a) is granted, and the deadline for the filing of a reaffirmation agreement with one or both of the Creditors is extended to and including October 20, 2013. The debtor's request to extend the deadline for the Creditors to file a complaint objecting to discharge pursuant to Fed. R. Bankr. P. 4004(b) is denied.

Fed. R. Bankr. P. 4008(a) authorizes the court "at any time and in its discretion [to] enlarge the time to file a reaffirmation agreement."

Pursuant to Fed. R. Bankr. P. 4004(b), "on motion of any party in interest, after notice and hearing, the court may for cause extend the time to object to discharge. Except as provided in subdivision (b)(2), the motion shall be filed before the time has expired." Fed. R. Bankr. P. 4004(b)(1). Thus, in order to take advantage of subsection (b)(1), a party in interest must file its motion prior to the expiration date set for filing an objection to the debtor's discharge. Here, the deadline to object to the debtor's discharge expired on August 5, 2013 (Dkt. 5). This motion was filed on September 9, 2013. Therefore, the debtor's motion to extend the Creditors' time to object to discharge was not timely filed, and Fed. R. Bankr. P. 4004(b)(1) is inapplicable.

Fed. R. Bankr. P. 4004(b)(2) governs untimely motions to extend time to object to discharge. Under subsection (b)(2), "a motion to extend the time to object to discharge may be filed after the time for objection has expired and before discharge is granted if (A) the objection is based on facts that, if learned after the discharge, would provide a basis for revocation under § 727(d) of the Code, and (B) the movant did not have knowledge of those facts in time to permit an objection. The motion shall be filed promptly after the movant discovers the facts on which the objection is based." Fed. R. Bankr. P. 4004(b)(2). The debtor's motion and declaration provide no evidence that the Creditors are even considering objecting to his discharge in this case, let alone objecting on grounds that would provide a basis for revocation of discharge pursuant to 11 U.S.C. § 727(d). Simply citing to Fed. R. Bankr. P. 4004(b) and stating that more time is needed to file a reaffirmation agreement is insufficient for the court to grant the Creditors an extension of the time to file an objection to discharge under Fed. R. Bank. P. 4004(b)(2).

Excusable neglect is not a basis for enlargement of the time set forth in Fed. R. Bankr. P. 4004(a). Fed. R. Bankr. P. 9006(b)(3).

The court will issue a minute order.

21. [13-29538](#)-B-7 ANGELICA SOTO CONTINUED MOTION TO COMPEL
JDP-1 ABANDONMENT
7-29-13 [[10](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

22. [13-29642](#)-B-7 RUSSELL/JILL TOWNE CONTINUED MOTION TO COMPEL
DL-1 ABANDONMENT
8-15-13 [[14](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

This matter is continued to November 26, 2013 at 9:32 a.m.

The court approves the stipulation filed by the parties on October 1, 2013 (Dkt. 29) to continue the matter.

The court will issue a minute order.

23. [13-28453](#)-B-7 VINCENT FAGALDE MOTION TO AVOID LIEN OF MIDLAND
GW-1 FUNDING, LLC
9-16-13 [[15](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of Midland Funding, LLC, recorded in the official records of Sacramento County, Book No. 20130517, is avoided as against the real property located at 106 Black Powder Circle, Folsom, CA 95630.

The subject real property has a value of \$629,000.00 as of the date of the petition. The unavoidable liens total approximately \$602,760.00. The debtor claimed the property as exempt under California Code of Civil Procedure Section 704.730(a)(2) under which he exempted \$100,000.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided.

The court will issue a minute order.

24. [13-28453](#)-B-7 VINCENT FAGALDE MOTION TO AVOID LIEN OF PNC
GW-2 BANK, N.A.
9-16-13 [[20](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of PNC Bank, N.A., recorded in the official records of Sacramento County, Book No. 20130530, is avoided as against the real property located at 106 Black Powder Circle, Folsom, CA 95630.

The subject real property has a value of \$629,000.00 as of the date of the petition. The unavoidable liens total approximately \$602,760.00. The debtor claimed the property as exempt under California Code of Civil Procedure Section 704.730(a)(2) under which he exempted \$100,000.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided.

The court will issue a minute order.

25. [13-29853](#)-B-7 ALAN/SANDY SAYAREH MOTION TO AVOID LIEN OF CACH,
SG-1 LLC
9-5-13 [[10](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of Cach, LLC, recorded in the official records of Sacramento County, Book No. 20120210, is avoided as against the real property located at 4811 Graduates Lane, Sacramento, CA 95841.

The subject real property has a value of \$283,000.00 as of the date of the petition. The unavoidable liens total approximately \$372,684.61. The debtors claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(5) under which they exempted \$1.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtors' exemption of the real property and its fixing is avoided.

The court will issue a minute order.

26. [13-29853](#)-B-7 ALAN/SANDY SAYAREH
SG-2

MOTION TO AVOID LIEN OF CACH,
LLC
9-5-13 [[14](#)]

Tentative Ruling: The court issues the following abbreviated tentative ruling.

The motion is denied without prejudice.

The debtors seek to avoid the lien of Cach, LLC that allegedly impairs their exemption in their citizenship papers located in the Wells Fargo Bank, N.A. Safety Deposit Box CAWFB003793531 at 7225 Fair Oaks Boulevard 1st Floor, Carmichael, CA 95608. However, the debtors have not satisfied all of the elements required for avoidance of a judicial lien pursuant to 11 U.S.C. § 522(f).

First, there must be an exemption to which the debtor "would have been entitled under subsection (b) of this section." 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be either a nonpossessory, nonpurchase-money security interest in categories of property specified by the statute, 11 U.S.C. § 522(f)(2), or be a judicial lien. 11 U.S.C. § 522(f)(1).

In re Mohring, 142 B.R. 389, 392-93 (Bankr. E.D. Cal. 1992), aff'd, 24 F.3d 247 (9th Cir. 1994).

Here, the debtors have failed to prove the existence of a lien encumbering their personal property. The court notes that "unlike a real property judgment lien or writ of execution which must be issued by the court clerk, a judgment lien on personal property is prepared by the creditor's attorney and then filed with the Secretary of State." See Judge Alan M. Ahart, Cal. Practice Guide: Enforcing Judgments and Debts (The Rutter Group 2012), ¶ 6:232, 6C-1 (rev. # 1, 2010); C.C.P. § 697.510(a) ("A judgment lien on personal property...is created by filing a notice of judgment lien in the office of the Secretary of State pursuant to this article"). While the court acknowledges the abstract of judgment and notice of levy that the debtors have attached to their motion, these documents provide no evidence that Cach, LLC has filed its judgment lien with the Secretary of State. Therefore, the debtors have not shown that the subject lien is avoidable under 11 U.S.C. § 522(f)(1).

The court will issue a minute order.

27. [13-22280](#)-B-7 LOUIS/DORATHY ZALAR MOTION FOR COMPENSATION FOR
GMR-2 GABRIELSON & COMPANY,
ACCOUNTANT(S), FEES: \$2,112.50,
EXPENSES: \$55.65
9-7-13 [[70](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. The application is approved on a first and final basis in the amount of \$2,112.50 in fees and \$55.65 in expenses, for a total of \$2,168.15, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

Applicant seeks compensation for services rendered and costs incurred during the period March 1, 2013, through September 5, 2013. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

28. [13-27086](#)-B-7 LINDA LUERS AND ERIC CONTINUED MOTION TO DISMISS
UST-1 SARVER CASE
7-30-13 [[17](#)]

Tentative Ruling: This motion has been withdrawn, and it is dropped from the calendar.

The moving party withdrew this motion on September 23, 2013 (Dkt. 29).

The court will issue a minute order.

29. [13-25898](#)-B-7 KEITH/PATRICIA HEARDEN MOTION TO AVOID LIEN OF BAYVIEW
RWF-2 LOAN SERVICING, LLC
9-10-13 [[26](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of Bayview Loan Servicing, LLC, recorded in the official records of Mohave County, Fee # 2010069521, is avoided as against the real property located at 2520 Highland Trail, Bullhead City, AZ 86442

The subject real property has a value of \$275,000.00 as of the date of the petition. The unavoidable liens total approximately \$300,017.88. The debtors claimed the property as exempt under 11 U.S.C. §§ 522(d)(1)

and (d)(5), under which they exempted \$20.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtors' exemption of the real property and its fixing is avoided.

The court will issue a minute order.

30. [13-20769](#)-B-7 MICHAEL/KRISTINE SHAFFER MOTION TO SELL O.S.T.
JRR-3 9-30-13 [[46](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(3)(motions set on shortened time). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The motion is granted in part. Pursuant to 11 U.S.C. § 363(b), the trustee is authorized to short sell real property located at 3231 Black Oak Drive, Rocklin, CA 95765 ("Property") to Brian V. Cumbra and Nicole Cumbra on the terms set forth in the California Residential Purchase Agreement and Joint Escrow Instructions attached as Exhibit A to the motion (Dkt. 49, p.2), provided that the court's ruling does not authorize sale of the Property to any other purchaser, does not authorize sale of the Property free and clear of liens, and does not require any lienholder to reconvey or release its interest in the Property unless it has voluntarily agreed to do so. The trustee is authorized pursuant to 11 U.S.C. § 330(a) to pay the listing agent, Ann Bryan of Lyon Real Estate, through escrow, a commission totaling \$17,666.67 from the gross proceeds of the sale for actual, necessary services performed and actual, necessary expenses incurred. The trustee is authorized to disburse from the sale proceeds, through escrow, the sum of \$12,333.33 to the buyer's agent, Prato Real Estate ("Prato"). The trustee is authorized to collect a \$10,000.00 premium fee from the successful buyers. The trustee is also authorized to execute all documents necessary to complete the approved sale. The 14-day stay of Fed. R. Bankr. P. 6004(h) is waived. Except as so ordered, the motion is denied.

The trustee has made no request for a finding of good faith under 11 U.S.C. § 363(m), and the court makes no such finding.

The court will issue a minute order.

31. [12-39826](#)-B-7 ILDEFONSO/ANDREA RUIZ CONTINUED MOTION TO COMPEL
FF-2 ABANDONMENT
7-29-13 [[78](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

Pursuant to 11 U.S.C. § 554(b), the motion is granted, and the estate's

interest in the real property located at 11 Chicory Bend Court, Sacramento, CA 95831 (the "Property") is deemed abandoned by the estate. Except as so ordered, the motion is denied.

The debtors allege without dispute that the Property, after accounting for all encumbrances and claimed exemptions, has no equity available for distribution to creditors. The debtors have proven that the Property is of inconsequential value and benefit to the estate. The chapter 7 trustee withdrew her opposition to the motion on September 30, 2013 (Dkt. 95).

The court will issue a minute order.